



4184-29

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice for Public Comment on the Child Abuse Prevention and Treatment Act

(CAPTA)

AGENCY: Children's Bureau; Administration on Children, Youth and Families; ACF, HHS

ACTION: Notice.

SUMMARY: Pursuant to 42 U.S.C. 5106a, the Children's Bureau (CB) announces the opportunity for public comment on the policy interpretation of section 106(b)(2)(B)(x) articulated in question 2.1A.4 #8 of the Child Welfare Policy Manual (CWPM), which concerns the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality.

DATES: Submit written or electronic comments on or before [INSERT DATE 90 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons may submit comments to <http://www.regulations.gov/>.

We urge you to submit comments electronically to ensure they are received in a timely manner. Written comments may also be submitted to Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Policy Division, 8th Floor, 1250 Maryland Avenue, S.W., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Policy

Division, 8th Floor, 1250 Maryland Avenue, S.W., Washington, DC 20024. Email address: cbcomments@acf.hhs.gov.

SUPPLEMENTARY INFORMATION: Section 106(b)(2)(B)(x) of CAPTA requires a certification by the State Governor that the State has in effect and is enforcing a State law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes “provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality.”

We revised our policy interpretation of the statutory provision regarding public disclosure of information in cases of child abuse or neglect which have resulted in a child fatality or near fatality found in section 106(b)(2)(B)(x) of CAPTA in September 2012 with the addition of CWPM question 2.1A.4 #8. This interpretation requires States to develop procedures for the release of information including, but not limited to: the cause of and circumstances regarding the fatality or near fatality; the age and gender of the child; information describing any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality; the result of any such investigations; and the services provided by and actions of the State on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality. States may allow exceptions to the release of information in order to ensure the safety and well-being of the child, parents and family or when releasing the information would jeopardize a criminal investigation, interfere with the protection of those who report child abuse or neglect or harm the child or the child's family. States must also ensure compliance with other federal confidentiality restrictions when implementing the confidentiality provisions under CAPTA, including the confidentiality requirements applicable to titles IV-B and IV-E of the Social Security Act

(the Act) and in accordance with 45 CFR 1355.30, which requires that records maintained under title IV-E and IV-B of the Act are subject to the confidentiality provisions in 45 CFR 205.50. Among other things, 45 CFR 205.50 restricts the release or use of information concerning individuals receiving financial assistance under these programs to certain persons or agencies that require the information for specified purposes.

We also revised several CWPM answers in section 2.1A to bring them in line with the policy as outlined in the new question and answer (Q/A). CWPM section 2.1A.1, questions 1, 2, 6, and 8; and CWPM section 2.1A.4, questions 3, 4, 5, 6, and 7 were all revised. At that time, Q/A 2.1A.4 #2, was deleted, but it was updated and reissued in August 2013. This Q/A clarifies that when child abuse or neglect results in the death or near death of a child, the State must provide for the disclosure of the information required by section 2.1A.4, Q/A #8 of the CWPM, but that the provision should not be interpreted to require disclosure of information which would fall within the specific exceptions that states are allowed to establish under section 2.1A.4, Q/A #8 of the CWPM. The full Q/A 2.1A.4 #2 can be found at:

http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=68#320. The history of the modified Q/A's is also available in the CWPM at: http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=68#2561).

We seek comment from state agencies and other stakeholders about the revised policy interpretation at CWPM, section 2.1A.4, Q/A #8, or any other revised policies in section 2.1A of the CWPM noted above.

We encourage stakeholder respondents to address the following questions:

- 1) Please describe any challenges you've had obtaining information about child fatalities and near fatalities which resulted from child abuse and neglect from a state. Have there been improvements in obtaining the information since CB revised the policy in CWPM section 2.1.A in September 2012?
- 2) What concerns, if any, do you have with the definition of near fatalities in a state?
- 3) Has a state responded that the state cannot disclose information due to confidentiality protections? If so, describe the information requested and the confidentiality provision cited by the state.
- 4) Does your state offer a public report of the child fatalities review panel/commission? If so, does the report contain the required disclosure of information? Is the report a barrier to obtaining information?

We encourage state agency respondents to address the following questions:

- 1) What challenges, if any, have you faced implementing the revised policy? Has the revised policy improved your disclosure process and policies?
- 2) Are there challenges in applying the disclosure policy while also ensuring that you adhere to confidentiality protections?

__March 24, 2015_____

Dated

Mark H. Greenberg

Acting Assistant Secretary

for Children and Families

